APPENDIX

Remittitur of New York Court of Appeals, July 7, 1966, as amended pursuant to order dated February 21, 1967

1. No. 511. 65

THE PEOPLE &c., *Respondent,*

vs.

MARK FEIN, *Appellant.*

BE IT REMEMBERED, That on the 17th day of November in the year of our Lord one thousand nine hundred and sixty-five, Mark Fein, the appellant in this cause, came here unto the Court of Appeals, by Phillips, Nizer, Benjamin, Krim & Ballon, his attorneys, and filed in the said Court a Notice of Appeal and return thereto from the judgment of the Appellate Division of the Supreme Court in and for the First Judicial Department. And The People &c., the respondent in said cause, afterwards appeared in said Court of Appeals by Frank S. Hogan, District Attorney.

Which said Notice of Appeal and the return thereto, filed as aforesaid, are hereunto annexed.

WHEREUPON, The said Court of Appeals having heard this cause argued by Mr. Louis Nizer, of counsel for the appellant, and by Mr. Eric A. Seiff, of counsel for the respondent, and after due deliberation had thereon, did order and adjudge that the judgment of the Appellate Division of the Supreme Court appealed from herein be and the same hereby is affirmed, and thereafter a motion to amend the remittitur having been granted this remittitur is hereby amended by adding thereto the following: Upon the appeal herein there was presented and necessarily passed upon the following question under the Constitution of the United States, in addition to the other constitutional questions expressly passed upon in the opinion, viz.: Appellant contended that the order of the Supreme Court denying his pretrial motion for discovery and inspection of the bullets

found in decedent's body deprived him of a fair trial. The Court of Appeals held that the appellant's constitutional rights were not violated.

And thereafter a motion to further amend the remittitur having been granted this remittitur is hereby further amended by adding thereto the following: Upon the appeal herein there was presented and necessarily passed upon the following question under the Constitution of the United States, viz: Appellant contended that the order of the trial court, subjecting him to a trial before a special jury rather that a general jury, denied him a fair trial and deprived him of due process and the equal protection of the laws. The Court of Appeals held that the appellant's constitutional rights were not violated and that former Section 749-aa of the Judiciary Law authorizing such a trial is constitutional.

And it was also further ordered, that the records aforesaid, and the proceedings in this Court, be remitted to the Supreme Court of the State of New York, there to be proceeded upon according to law.

Therefore, it is considered that the said judgment be affirmed, as aforesaid.

And hereupon, as well the Notice of Appeal and return thereto aforesaid as the judgment of the Court of Appeals aforesaid, by it given in the premises, are by the said Court of Appeals remitted into the Supreme Court of the State of New York before the Justices thereof, according to the form of the statute in such case made and provided, to be enforced according to law, and which record now remains in the said Supreme Court, by the Justices thereof, &c.

RAYMOND J. CANNON
Clerk of the Court of Appeals
of the State of New York

Court of Appeals, Clerk's Office,
Albany, July 7, 1966.

I HEREBY CERTIFY, that the preceding record contains a correct transcript of the proceedings in said cause in the Court of Appeals, with the papers originally filed therein, attached thereto.

RAYMOND J. CANNON
Clerk.

COURT OF APPEALS

State of New York, ss:

PLEAS in the Court of Appeals, held at Court of Appeals Hall, in the City of Albany, on the 7th day of July in the year of our Lord one thousand nine hundred and sixty-six, before the Judges of said Court.

Witness,

THE HON. CHARLES S. DESMOND,
Chief Judge, *Presiding.*
RAYMOND J. CANNON,
Clerk.

REMITTITUR July 7, 1966

Original Remittitur Filed Jul 18 1966
Supreme Court
New York County
Appeal Bureau

Amended Remittitur Refiled Mar 1 1967
Supreme Court
New York County
Appeal Bureau